

## **New in the regulation of the obligations of subsoil users for "compensatory" reforestation (afforestation)**

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The article examines the legal problems of forest production for the construction, reconstruction, operation of linear objects, as well as the latest changes in the forestry sector in the field of rights.

**Keywords:** forest, reforestation, afforestation, forestry projects. climate change, subsoil use.

Russia's forests are of global importance due to their colossal size, enormous carbon potential, biodiversity and forest resources (both wood and non-wood). In addition, the forestry sector of the economy is of great national importance, as it provides a significant share of GDP, export earnings and employment. A rich history of forest management has made Russia one of the leaders in forest conservation, research and development.

In the history of forestry, Peter I can be considered the founder of almost all branches of the timber industry and forestry. It is generally accepted that it was at that time that the key principle of constant and inexhaustible use of the forest was laid - the basis of modern forestry. In the 18th century, a German Ferdinand Vokel was invited to Russia, who created the first forest plantation in the country. After Fokel's death, a manuscript of the book "Description of the natural state of forests growing in the northern Russian countries with various notes and instructions on how to plant" remained, where the forester tells about the differences in climatic conditions of the Russian north and their impact on forest crops and forestry methods.

So, nowadays, Federal Law № 212-FZ of 19.07.2018 "On Amendments to the Forest Code of the Russian Federation and certain legislative acts of the Russian Federation in terms of improving forest reproduction and afforestation"<sup>1</sup> (hereinafter - Federal Law No. 212-FZ), which entered into force on 01.01.2019, a duty was established for tenants of forest plots using forests in accordance with Articles 43-46 of the Forest Code of the Russian Federation of 04.12.2006 № 200-FZ<sup>2</sup> (hereinafter - Forest Code of the Russian Federation), including for the construction, reconstruction, operation of linear facilities, to carry out reforestation (afforestation) on an area equal to the area of

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<sup>1</sup> Federal Law of 19.07.2018 № 212-FZ "On Amendments to the Forest Code of the Russian Federation and certain legislative acts of the Russian Federation in terms of improving forest reproduction and afforestation" // SPS "Consultant-Plus"

<sup>2</sup> Forest Code of the Russian Federation of 04.12.2006 № 200-FZ // SPS "Consultant-Plus"

felled forest plantations, no later than one year after the felling of the forest, within the boundaries of the territory of the relevant subject<sup>3</sup>.

In the literature, this norm is assessed from a positive point of view as aimed at improving the quality of forests<sup>4,5</sup>.

Prior to the adoption of Federal Law № 212-FZ, work on reforestation (afforestation) was carried out by state authorities, local self-government bodies within the limits of their powers<sup>6</sup>.

Based on the structure of the Forest Code of the Russian Federation itself, one of its chapters is devoted to the reproduction of forests and afforestation, built on the principles of protection, protection and reproduction of forests, laid down in Soviet times<sup>7</sup>. This institution includes forest seed production, reforestation, forest care, the implementation of the assignment of lands intended for reforestation to the lands on which forests are located, as well as afforestation.

It is necessary to distinguish between the concepts of reforestation and afforestation. According to Article 62 of the Forest Code of the Russian Federation, reforestation is carried out in a natural, artificial or combined way in order to restore felled, dead, damaged forests, as well as to preserve the useful functions of forests, their biological diversity. At the same time, according to Article 63 of the Forest Code of the Russian Federation, afforestation is carried out on lands of the forest fund and on lands of other categories in order to prevent soil erosion and other purposes related to increasing the potential of forests.

The procedure for performing work by artificial and combined methods for certain categories of persons, including for subsoil users, was approved by the Decree of the Government of the Russian Federation dated 05.07.2019 № 566 "On approval of the Rules for the performance of work on reforestation or afforestation by persons using forests in accordance with Articles 43 - 46 Of the Forest Code of the Russian Federation, and persons who have applied with a petition or application to change the designated purpose of the forest area"<sup>8</sup>. The reforestation project and the reforestation project are developed in accordance with the orders of the Ministry of Natural Resources of Russia

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<sup>3</sup> Ignatieva I.A. The use of land and land plots with electric power facilities: law and practice: a tutorial. M.: Prospect, 2019. 368 P. // SPS "Consultant-Plus"

<sup>4</sup> Akopdzhanova M.O. Modern forestry legislation: the history of formation, development trends and legal enforcement // Lawyer. 2019. № 9. P. 60 - 63. // SPS "Consultant-Plus"

<sup>5</sup> Chernov S.N. Features of the development of modern forest legislation of the Russian Federation // Lawyer. 2020. № 4. P. 66 - 70. // SPS "Consultant-Plus"

<sup>6</sup> Environmental law: textbook / O.I. Crassov. –3rd ed., rev. – M.: INFRA-M, 2014. – P. 386 -394.

<sup>7</sup> Bogolyubov S.A. Environmental law. Textbook for universities. – M.: Publishing group NORMA-INFA M, 1999. –P. 296.

<sup>8</sup> Decree of the Government of the Russian Federation of 07.05.2019 № 566 "On approval of the Rules for the performance of work on reforestation or afforestation by persons using forests in accordance with Articles 43 - 46 of the Forest Code of the Russian Federation, and persons who have applied with a petition or application to change the designated purpose of a forest area"// SPS "Consultant-Plus"

dated 04.12.2020 № 1014<sup>9</sup> and dated 30.07.2020 № 541<sup>10</sup>, which establish the rules for performing reforestation (afforestation) work for all categories of persons, including subsoil users.

The norm introduced by Federal Law № 212-FZ did not take into account the division of the country's territory into climatic zones<sup>11</sup>. O.I. Krassov once quite rightly noted that reforestation (afforestation) is carried out on a zonal-typological basis in accordance with the potential forest growing conditions of the sites, the silvicultural properties of tree and shrub species, and the goals of planting<sup>12</sup>.

An example of a constituent entity of the Russian Federation with severe, pronounced climatic conditions, where subsoil users carry out their activities in the extraction of minerals, is the Yamalo-Nenets Autonomous Okrug (hereinafter - YNAO), which is part of the Arctic zone of the Russian Federation<sup>13</sup>. On the territory of YNAO there are mainly forests belonging to the zone of pre-tundra forests and sparse taiga, as well as forests of the West Siberian north-taiga plain region<sup>14</sup>.

It is worth noting that the Arctic environment, with its fragile ecosystems, is very slow to recover from human intervention<sup>15</sup>. In this regard, it is worthwhile to separately approach the development of a set of measures aimed at regulating the ecosystems of this region.

The fulfillment of responsibilities for "compensatory" reforestation (afforestation) in YNAO is complicated by the harsh natural and climatic conditions, soil and climatic features, wetlands, inaccessibility, a short growing season, the lack of forest nurseries in the subject, planting material in the required amount, its high price and survival rate below the statutory<sup>16</sup> threshold of 85%, at which supplementation with forest crops is required. According to preliminary estimates, the cost of artificial reforestation in YNAO may reach 1 million rubles per 1 hectare, with the amount of 20 thousand rubles initially declared in the explanatory documents to the draft amendment to the forest code in terms of reforestation (afforestation).

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<sup>9</sup> Order of the Ministry of Natural Resources of Russia dated 04.12.2020 № 1014 "On approval of the Rules for reforestation, the composition of the reforestation project, the procedure for the development of the reforestation project and amending it" // SPS "Consultant-Plus"

<sup>10</sup> Order of the Ministry of Natural Resources of Russia dated 30.07.2020 № 541 "On approval of the Rules for afforestation, the composition of the afforestation project, and the procedure for its development" // SPS "Consultant-Plus"

<sup>11</sup> Berezhnoy V.A. Ecological and legal regime of nature management. Taxes (newspaper), 2008, № 31. // SPS "Consultant-Plus"

<sup>12</sup> Krassov O.I. Natural Resources of Russia: Commentary on Legislation. – M.: Business, 2002. – P. 653 – 664.

<sup>13</sup> Decree of the President of the Russian Federation of 02.05.2014 № 296 "On the land territories of the Arctic zone of the Russian Federation" // SPS "Consultant-Plus"

<sup>14</sup> Order of the Ministry of Natural Resources of Russia dated 04.12.2020 № 1014 "On approval of the Rules for reforestation, the composition of the reforestation project, the procedure for the development of the reforestation project and amending it" // SPS "Consultant-Plus"

<sup>15</sup> Environmental law: Textbook. – M.: ECC "Mart"; Rostov on Don: publishing center "Mart", 2005. – P. 407.

<sup>16</sup> Order of the Ministry of Natural Resources of Russia dated 04.12.2020 № 1014 "On approval of the Rules for reforestation, the composition of the reforestation project, the procedure for the development of the reforestation project and amending it" // SPS "Consultant-Plus"

For artificial and combined reforestation in the West Siberian north-taiga plain area YNAO, it is planned to use planting material that meets the criteria and requirements specified in the order of the Ministry of Natural Resources of Russia dated 04.12.2020 № 1014<sup>17</sup>. So, for Siberian spruce, Siberian larch, Siberian cedar pine, Scotch pine, requirements are imposed on the age of the planting material (2-4 years) and (or) to the height (more than 10 cm), as well as to the diameter of the stem at the root collar (more than 2 mm). However, on the territory of YNAO, artificial reforestation has not been carried out at all since 2004, including due to the lack of permanent forest nurseries on its territory. Thus, the main way of carrying out reforestation work is natural. The choice of this method is determined by both natural and economic conditions, which is confirmed by forest management projects.

In accordance with article 87 of the Forest Code of the Russian Federation, the basis for the use, protection, protection, reproduction of forests located within the boundaries of the forestry, forest park, is the forestry regulations of the forestry<sup>18</sup>. Forestry regulations of YNAO forestries (Nadym, Krasnoselkupsky, Noyabrsky, Tarkosalinsky) for the period 2019-2028 provide a natural way of reforestation<sup>19</sup>.

Natural reforestation is carried out with uniform conservation and in a sufficient amount of undamaged undergrowth of economically valuable species, as well as sources of seeding<sup>20</sup>. When using this method, there is no need for transportation and supplementation with artificially grown planting material. A feature of the process of reforestation in the zone of pre-tundra forests growing in extreme climatic conditions in the presence of permafrost is its duration. At the initial stage of reforestation, deciduous species appear and only after 3-5 years - conifers, which have real value (pine). In general, the process of formation of the coniferous massif ends in 20-25 years.

Federal Law № 212-FZ provides for work on "compensatory" reforestation (afforestation), initially without taking into account the peculiarities of various natural and climatic zones, and also imposing on subsoil users the obligation to carry out non-core work, the quality of which depends on the conscientiousness of the contractors, and their control goes beyond the competence of subsoil users.

In July 2021, Federal Law № 303-FZ dated 02.07.2021 "On Amendments to the Forest Code of the Russian Federation and Certain Legislative Acts of the Russian Federation"<sup>21</sup> (hereinafter -

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<sup>17</sup> Order of the Ministry of Natural Resources of Russia dated 04.12.2020 № 1014 "On approval of the Rules for reforestation, the composition of the reforestation project, the procedure for the development of the reforestation project and amending it" // SPS "Consultant-Plu"s

<sup>18</sup> Dobrovolsky A.A. Features of the development of design documentation for forest areas transferred for use // Environmental Law. 2017. № 4. P. 38 - 40. // SPS "Consultant-Plus"

<sup>19</sup> <https://dpr.yanao.ru/activity/3283/>

<sup>20</sup> Krassov O.I. Natural Resources of Russia: Commentary on Legislation. – M.: Business, 2002. – 816 P.

<sup>21</sup> Federal Law of 02.07.2021 № 303-FZ "On Amendments to the Forest Code of the Russian Federation and Certain Legislative Acts of the Russian Federation" // SPS "Consultant-Plus"

the Law) was adopted, which implies another fundamental revision of the forestry institute, which will result in another significant deterioration the position of subsoil users by increasing the scope of obligations, a significant increase in cash costs.

Initially, his idea was only to increase the deadlines for fulfilling obligations for "compensatory" reforestation (afforestation) from one year to three years, subject to agrotechnical maintenance of the created forest cultures within three years after their planting. Subsequently, the Law was supplemented with a number of norms.

According to the statement of the Deputy Chairman of the Government of the Russian Federation V.V. Abramchenko "with the adoption of the bill, business representatives who do not have sufficient resources or competencies to carry out reforestation will be able to order such turnkey work from regional forestries"<sup>22</sup>. Thus, the Law was supplemented with a number of norms providing for work on reforestation (afforestation) with the involvement of professional executors - state (municipal) institutions.

As part of the discussion at the working groups in the Ministry of Energy of Russia and the Ministry of Natural Resources of Russia, representatives of subsoil users suggested that as a measure to encourage companies to apply for this service to professional performers, it is worthwhile to provide for the fulfillment of the obligation from the moment of payment for the services of such specialized institutions, as well as the transfer of responsibility for "compensatory" reforestation for these state (municipal) institutions. In addition, now there is a problem with the lack of a sufficient number of contractors capable of carrying out work on reforestation (afforestation), since the organizations of the fuel and energy complex cannot independently carry out such work due to the lack of relevant experience and competence. The remark was taken into account when finalizing the Law for the second reading.

Another idea for finalizing the Law for the second reading was to replace the obligation of subsoil users to perform these works in kind with the payment of compensation payments for the implementation of measures for the protection, protection, reproduction of forests to the relevant state authorities of the constituent entity of the Russian Federation. The payment was supposed to be included in the form of an additional coefficient when calculating the rent for the forest area. This approach would allow reforming the forestry sector at the expense of business funds, attracting highly qualified forestry specialists to serve in the forestry sector. However, the Ministry of Natural Resources of Russia did not support the initiative due to the fact that these funds could only go to the federal budget, and forest plots are in federal ownership<sup>23</sup>. In order to lower these funds to the

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<sup>22</sup> <http://government.ru/news/41052/>

<sup>23</sup> Gulov E.A. Ensuring the safety of forest lands by means of prosecutor's intervention // Legality. 2019. N 8. P. 21 - 23. // SPS "Consultant-Plus"

level of the budget of the constituent entities, it is necessary to "paint" them, for which it is necessary to develop and approve an appropriate methodology.

The subsoil is also provided for geological study, including the search and assessment of mineral deposits<sup>24</sup>. Subsoil users carry out geological study of the subsoil by seismic studies on profiles reaching several hundred kilometers in length. A seismic profile or profile is a clearing, along which equipment is installed for carrying out work on the search for minerals (usually its width is limited to 4 meters)<sup>25</sup>. For this purpose, felling of forest stands is carried out on these seismic profiles.

An acute problem for subsoil users has become the obligation to carry out work on "compensatory" reforestation (afforestation) on such seismic lines. Earlier, the Ministry of Natural Resources of Russia initiated amendments to the Decree of the Government of the Russian Federation dated 07.05.2019 № 566, providing for the possibility of carrying out reforestation in a natural way on seismic profiles. Seismic surveys in YNAO are carried out in winter on narrow seismic profiles (3-4 m) in the presence of a stable snow cover, which provides a minimum negative impact on the forest biocenosis with the preservation of the ground cover and undergrowth that can form a new stand. Under these conditions, it is sufficient to carry out work on reforestation in a natural way. The law excluded this possibility. As mentioned above, the low survival rate in the Arctic region has shown that the natural method is optimal for these territories. When the Law was finalized for the second reading, the work on reforestation on seismic profiles was provided in a natural way.

One of the ideas on how to avoid the influence of the harsh climatic conditions of the north was the opportunity to change the norm of the Forest Code of the Russian Federation and go beyond the boundaries of the subject where the felling was carried out. The law provides for work on reforestation (afforestation) outside the constituent entity of the Russian Federation, where felling was carried out, if there are no lands in it that need reforestation (afforestation). Firstly, the norm contains an evaluation criterion, it is not clear on what principle and who should determine the assignment of certain lands to those in need of reforestation (afforestation). Secondly, not all business representatives have their branches outside the region in which the company operates, including in the southern regions of the country. Thirdly, the implementation of reforestation (afforestation) outside the location and implementation of the company's activities entails an unreasonable rise in the cost of the projects being implemented. Fourthly, the constituent entities of the Russian Federation, forest nurseries are unlikely to support such an obvious "bias" in

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<sup>24</sup> Bogolyubov S.A. Environmental law. Textbook for universities. – M.: Publishing group NORMA-INFA M, 1999. – P. 259.

<sup>25</sup> <https://greenpeace.ru/stories/2018/11/21/nam-ot-nefti-nichego-odni-problemy/>

reforestation in the southern regions, where reforestation is cheaper and easier to carry out. At the same time, the aforementioned norm was not excluded from the text of the Law when it was finalized for the second reading.

The controversial norm included in the Law was an increase in the terms of fulfilling obligations for "compensatory" reforestation (afforestation) from one year to three years, provided that agrotechnical measures were carried out during this period.

Under the influence of harsh climatic conditions, the death of forest crops will increase over the established three years, especially in winter. The fulfillment of obligations on "compensatory" reforestation is made dependent on climatic risks that cannot be managed. In addition, the addition of forest crops to replace those killed in the specified period and the implementation of agrotechnical measures will significantly increase the costs of subsoil users, regardless of the quality of such work, will entail the emergence of additional administrative barriers, and also once again force the business to engage in non-core activities.

Chapter 4 of the Forest Code of the Russian Federation "Forest reproduction and afforestation" retains its original approach and does not make adjustments to the subject composition. In the articles of this chapter, the main subjects of activity are loggers, as well as other business representatives (subsoil users, etc.). Their status and conditions of work, laid down in the norms on forest reproduction, are equated, but the approach seems to be incorrect. Loggers receive a plot of land for lease, perform felling on it, and reforestation on the same plot. Subsoil users, on the other hand, cut forest plantations on the leased plot and do not carry out reforestation work on the same plot. To fulfill their obligations on "compensatory" reforestation, they choose on the website Information about the specified lands intended for artificial reforestation is posted by the authorized body on its official website in the information and telecommunication network "Internet" in accordance with Part 3 of Article 5.1 of the Forest Code of the Russian Federation.

Thus, in this case, even their original goals diverge. It is important for loggers to get a plot with a high bonitet of forest plantations growing on it, they are interested in the high quality of the timber obtained, which is almost absent in the territory of YNAO. Moreover, loggers perform felling taking into account the preservation of individual trees, contributing to subsequent seeding. Subsoil users lease a site for the purpose of erecting structures (buildings, linear objects) on it, conducting geological studies and do not pursue the goal of curing any benefit from the wood obtained during felling.

In connection with the work carried out by subsoil users on reforestation (afforestation) not on the site originally leased, it is advisable to establish the legal basis for the use of forest plots when carrying out reforestation (afforestation) work, since the Forest Code of the Russian Federation does not provide for the use of forest plots in the form of reforestation (afforestation).

The law stipulates that failure to fulfill the reforestation (afforestation) project entails termination of the lease agreement for the forest plot. At the same time, the Ministry of Natural Resources of Russia has prepared a draft federal law "On Amendments to Article 74.1 of the Forest Code of the Russian Federation"<sup>26</sup>, in which one of the grounds for terminating the lease agreement is the lessee's failure to fulfill the forest reproduction measures envisaged by the forest development project, or their implementation in volumes less than 50% for three consecutive years. The norms of these acts do not correspond to each other. They worsen the situation of subsoil users, since the executive authorities of the constituent entities of the Russian Federation have the opportunity to terminate the lease only on the basis of failure to fulfill one of the activities of the reforestation (afforestation) project. This approach entails the risks of suspending the activities of subsoil users for geological study, exploration and production of subsoil. At the same time, the grounds for termination of the lease agreement are already provided for in the Forest Code of the Russian Federation<sup>27</sup>, thus, the introduction of this norm will be redundant and will entail the emergence of a legal conflict.

The norms of the Law stipulate, as a result of the work carried out, "the assignment of lands on which artificial reforestation is carried out to the lands on which forests are located." This means that the responsibility of subsoil users extends over a long period of 10-20 years, and the responsibility for reforestation must be fulfilled within a year. Therefore, the given period is not justified, as a possible adjustment to the norm, it was proposed to consider the obligations of subsoil users for reforestation fulfilled if the parameters established in the reforestation project agreed with the authorized bodies of state power and local self-government were achieved. However, the norm was not adjusted following the completion of the Law for the second reading.

Thus, the most acceptable way to solve some problems related to the obligations of subsoil users and their status in relations regulated by the Forest Code of the Russian Federation is to create a separate chapter in the Forest Code of the Russian Federation that regulates the specifics of the status of subsoil users.

One of the measures stimulating subsoil users to carry out work on reforestation (afforestation) could be the support of significant long-term investments of forest users, in particular, a decrease in rental payments for high-quality restored forest areas, a proportional increase in the permitted volume of forest use, etc.<sup>28</sup> In addition, reforestation projects voluntarily implemented by companies should be encouraged.

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<sup>26</sup> <https://regulation.gov.ru/projects#npa=112736>

<sup>27</sup> Olenina T.Yu. The right to free use of a forest area // Environmental Law. 2019. № 4. P. 21 - 23. // SPS "Consultant-Plus"

<sup>28</sup> [https://lesprominform.ru/media/\\_protected/journals\\_pdf/14786/lpi\\_142.pdf](https://lesprominform.ru/media/_protected/journals_pdf/14786/lpi_142.pdf)